

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2963 OF 2004

Amir Khan, Proprietor of Bharat
Car & Lorry Driving & Mechanical
School and Ors.

... Petitioners

Vs.

The Regional Provident Fund
Commissioner and ors.

... Respondents

Mr. N.M. Ganguli with Ms. V.K. Gupta for
Petitioner.

Mr. M.S. Karnik for Respondent No. 1.

Mr. Y.R. Mishra with Mr. S.S. Pakale for
Respondent No. 2.

CORAM : F.I. REBELLO,J.
DATED : DECEMBER 09, 2004

P.C.

1. Rule. By consent heard forthwith.

2. The Petitioner by the present petition, impugns various orders dated 31.7.2004, 16.1.2004, 25.8.2004 passed under the provisions of the Employees Provident Fund and M.P. Act, 1952.

Various other reliefs have also prayed for.

3. It is principally contended on behalf of the petitioner that they are having motor driving school where they are teaching the clients to drive vehicles. The Respondents have clubbed these activities as educational and have consequently passed orders which are subject matter of the

present petition.

4. It is submitted that there is no material whatsoever to show that they can be classified under the head education nor the respondents have disclosed the basis on which they are clubbed under that head. It is therefore, submitted that the impugned orders being without jurisdiction are liable to be quashed and set aside.

5. It is secondly submitted that the petitioners are distinct entities inspite of that they are being clubbed together. These entities being persons at law could not have been clubbed together and on that count also the orders are liable to be set aside. Lastly it is contended that no hearing was given and in these circumstances all the orders are violative of principles of natural justice and fair play.

6. On the other hand on behalf of the Respondents, affidavit reply has been filed by Respondent No. 1. It is pointed out that the Petitioners herein had never challenged the order regarding clubbing of the establishments and that order has become final and therefore, cannot be challenged in the present writ petition. It is further set out that the proceedings under Section 7A was to assess the Provident fund dues from January, 1991 to April,

2003. During the proceedings the petitioner did not dispute the applicability of the Act to their establishment. It is also pointed out that the order was passed after giving reasonable opportunity to the petitioners, It is therefore, submitted that there is no merit in the petition which accordingly should be dismissed.

7. Having heard learned counsel, I am of the view that in so far as issue regarding clubbing is concerned, it will not be open to the petitioner in this writ petition to challenge the said order as the order of clubbing was passed earlier and it will be open to the petitioner if aggrieved, to challenge the order of clubbing in independent proceedings which he may be legally advised to take. Once the point as to clubbing is rejected, in so far as present petition is concerned, the contention that there is violation of principles of natural justice and fair play must also be rejected, as admittedly the clubbed body was given hearing.

8. That leaves us with the last contention namely whether the petitioners could have been assessed under the head Educational Institution. Neither from the order nor from the material is it possible to know the basis on which the petitioners who are running the motor driving school have been clubbed

as educational institution. The respondents before so clubbing must disclose the reasons as to why the petitioners are falling under the said Act. There is absence of such material. It is therefore, not possible to know the basis on which Respondents have ;been clubbed under the heading "Educational Institution". Considering the above, in my opinion, ends of justice will be met if the impugned orders are set aside and the matter is remanded back to Respondent No. 1 and Respondent No. 1 after hearing the parties to pass orders de novo by recording reasons. Rule therefore, made absolute in terms of Prayer Clauses (a) and (b).

No order as to costs. C.C. expedited.

9. On behalf of the Petitioners, it is pointed out that some amounts have already been paid That amount will remain in the custody of the Respondents. If the Petitioner succeeds that amount will be repaid to the Petitioners. If the order is adverse, that amount will be adjusted against dues of the Petitioners.

s

(F.I. REBELLO,J.)